

Dallin W. Jensen  
Assistant Attorney General  
Attorney for State Engineer  
442 State Capitol  
Salt Lake City, Utah 84114  
Telephone: 328-5671

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT  
IN AND FOR IRON COUNTY, STATE OF UTAH

IN THE MATTER OF THE GENERAL DETERMINATION. )  
OF THE RIGHTS TO THE USE OF ALL THE WATER, )  
BOTH SURFACE AND UNDERGROUND, WITHIN THE )  
DRAINAGE AREA OF THE BEAVER RIVER - )  
ESCALANTE VALLEY AND ALL TRIBUTARIES IN )  
MILLARD, BEAVER, IRON, WASHINGTON, KANE, )  
AND GARFIELD COUNTIES, IN UTAH. )

PRE-TRIAL ORDER

Civil No. 4415

ESCALANTE VALLEY DIVISION

The above entitled matter came before the court for a Pre-Trial hearing on September 12, 1968 with the Honorable C. Nelson Day presiding, and for a further Pre-trial hearing on May 20, 1970 with the Honorable James P. McCune presiding. The parties were represented by counsel as follows:

A. JOHN BOYDEN AND  
ALLEN TIBBALS  
Attorneys at Law  
315 East 2d South  
Suite 604

Salt Lake City, Utah 84111

Representing:

1. McKnight, Stanley and Albrecht, Milton
2. Newcastle Reservoir Company
3. Rocky Ford Irrigation Company

B. SAM CLINE  
Attorney at Law  
Milford, Utah 84751

Representing:

1. Baldwin, Jeff
2. Cook, Howard
3. Crosby, Arthur F.
4. Gubler, Rex H.
5. International Resources, Research and Development Co.
6. Kirk, J. Delmar
7. Lamoreaux, Donald D.
8. Mayer, James A. and Barbara J.
9. Mayer, Lloyd S. and Eugene H.
10. Milford City
11. Minersville Land and Livestock Company
12. Pinto Irrigation Company
13. Sullivan, Leland G.
14. Williams, McCoy

C. EDWARD W. CLYDE  
Attorney at Law  
351 South State  
Salt Lake City, Utah 84111

Representing:

1. Utah Construction and Mining Company

- D. ALFRED V. ERICKSON  
Attorney at Law  
2490 North Lake Avenue  
Altadena, California 91001  
Representing:  
Mears, Emeline
- E. J. LAMBERT GIBSON  
Attorney at Law  
174 East 8th South  
Salt Lake City, Utah 84111  
Representing:  
Baldwin, Jeff
- F. ORVILLE ISOM  
Attorney at Law  
56 West Harding Avenue  
Cedar City, Utah 84720  
Representing:  
1. Harrison, H. Karl and Lavon  
2. Harrison, H. Karl and Richard  
3. Robinson, Dee, Kenyon, and Leon
- G. H. RALPH KLEMM  
Assistant U. S. Attorney  
200 U. S. Post Office & Court House  
350 South Main  
Salt Lake City, Utah 84101  
Representing:  
United States of America
- H. DURHAM MORRIS  
Attorney at Law  
First Security Bank Building  
Cedar City, Utah 84720  
Representing:  
1. Cedar Sheep Association  
2. S. P. Lipoma Company  
3. Stimpson, Mabel E., Leonard D., James C., and Charles E.
- I. ELLIS PICKETT  
Attorney at Law  
Pickett Building  
St. George, Utah 84770  
Representing:  
1. Mannering, Charles and Agatha  
2. Reber, Clare and Mary Lynn
- J. E. J. SKEEN  
Attorney at Law  
522 Newhouse Building  
Salt Lake City, Utah 84111  
Representing:  
1. Applegate, Elbert  
2. Applegate, Lyle D.  
3. Bown, Teral M.  
4. Evans, Duard  
5. Gillins, Reed J. and  
Myers, William M.  
6. Goodwin, George C.  
7. Gronning, Vernon  
8. Kesler, Otto  
9. Limb, Earl  
10. Marshall, Clauss  
11. Nichols, S. W.  
12. Paxton, Taft  
13. Pearson, Ralph & June  
14. Price, Max K. & Claris B.  
15. Rowley, Daisy and  
Taylor, Kenley  
16. Sherwood, Martin & Jimmie  
17. Smith, Kent M. & George E.  
18. Smith, Kent M.  
19. Stewart, Irene  
20. Stewart, William J.  
21. Tolley, H. L.  
22. Walker, Theman  
23. Williams, McCoy  
24. Williams, McCoy and  
Anderson, Lillian  
25. Yardley, Duane  
26. Yardley, Waldo D.

K. DALLIN W. JENSEN  
Assistant Attorney General  
442 State Capitol  
Salt Lake City, Utah 84114  
Representing:  
1. Utah Board of Water Resources  
2. Utah Board of State Lands  
3. State Engineer

L. J. WENDELL BAYLES  
Attorney at Law  
800 Walker Bank Building  
Salt Lake City, Utah 84111  
Representing:  
Bayles, Herman, Estate  
Bayles, T. Wendell  
Bayles, Golden  
Brenner, Phoebe Dorothy  
Guymon, Eva May

M. The following parties in this action are not represented by counsel;

- |                                       |                             |
|---------------------------------------|-----------------------------|
| 1. Couch, Belle                       | 10. Smith, Hal              |
| 2. Farnsworth, Elmo B. and Elanore    | 11. Snow Ranches, Inc.      |
| 3. Foster, Karl F.                    | 12. Stewart, Cordia E.      |
| 4. Gardner, Leo J.                    | 13. Tattersall, Karla L.    |
| 5. Harrison, Albert                   | 14. Tebbs, D. Ray and D. A. |
| 6. Harrison, J. Ross                  | 15. Town of New Castle      |
| 7. Kaufman, Victor A. and Dorothea S. | 16. Tullis, Mary            |
| 8. Miller, Walter J.                  | 17. Wood, Henry A.          |
| 9. Santa Clara Cattle Association     | 18. Barton, Earl E.         |

#### I.

#### JURISDICTION

This is an action to determine the rights to the use of all of the water, both surface and underground, within the drainage area of the Escalante Valley Division of the Beaver River-Escalante Valley. This action is filed pursuant to the provisions of Chapter 4, Title 73, Utah Code Annotated, 1953, and jurisdiction of the court is not disputed and is hereby determined to be present.

#### II.

#### DECIDED ISSUES

It having been stipulated and agreed between the State Engineer and the affected parties that the Revised Determination of Water Rights shall be amended as follows:

1. The right of Elmo B. and Elanore Farnsworth for irrigation purposes under Water User's Claim Nos. 1257 and 1864 is increased to include the irrigation of an additional 4.4 acres of land as described in said claims.

2. The right for Leo J. Gardner for irrigation purposes under Water User's Claim No. 939 is increased from 122.20 acres to 133.20 acres of land which is described in said claim.

3. The point of diversion for Water User's Claim No. 208 owned by J. Ross and Betty D. Harrison is amended to include additional springs in the area described in said claim.

4. Clare and Mary Lynn Reber under Water User's Claim Nos. 306, 1351 and 1865 are entitled to an additional category of irrigation totaling 145.40 acres of land.

5. S. P. Lipoma Company is entitled to the irrigation requirements of 254 acres of land as set forth in Water User's Claim Nos. 1354, 1355, and 1795. This stipulation is subject to S. P. Lipoma Company submitting evidence of its ownership of said claims.

6. Cordia E. Stewart under Water User's Claim No. 2020 is entitled to an additional culinary right for 100 persons in a cafe and for sanitary purposes in a store and service station as set forth in said claim.

7. The name on Water User's Claim Nos. 2843 and 2844 is changed from Utah Construction Company to Utah Construction and Mining Company.

8. Karl F. Foster has a right for stockwatering and domestic purposes from a spring as set forth in Water User's Claim No. 2994.

9. Albert Harrison is entitled to a stockwatering right for 100 cattle and 3 horses from Pinto Creek, Herd House Spring, and Old Platt's Spring Area as described in Water User's Claim Nos. 3084, 3085, 3086 and 3087.

10. Herman Bayles Estate, T. Wendell Bayles, Golden Bayles, Phoebe Dorothy Brenner, and Eva May Guymon are entitled to a stockwatering right as described in Water User's Claim No. 1763.

11. International Resources, Research and Development Company is entitled to the irrigation requirements of 40 acres and incidental stockwatering right under Water User's Claim No. 1431 which is described in said claim.

water rights now shown in the name of individual water companies in this area and the Board joins in the claims of these companies. The Board holds title to said water rights by virtue of a contract between the Board and each of the individual companies for the construction of a water conservation project. However, said water rights are being re-purchased by the companies pursuant to the terms and conditions of these contracts. The companies involved in this program are:

1. Newcastle Reservoir Company
2. Rocky Ford Irrigation Company
3. Enterprise Reservoir and Canal Company

The specific rights to which the Board has title will be identified in the errata which the State Engineer will subsequently submit to the court.

### III.

#### CONFIRMATION OF RIGHTS NOT PROTESTED

The State Engineer has published the Revised Determination of Water Rights for Escalante Valley Division in five books encompassing the following subdivisions: Enterprise Area, Beryl Area, Milford Area, Millard County Area, and Supplement, Pending Applications, Disallowed Claims and Indexes, and copies of said Revised Determination having heretofore been served on those water users having water rights in said Division and a copy filed with this court pursuant to the provisions of Section 73-4-11, Utah Code Annotated, 1953.

NOW, THEREFORE, IT IS ORDERED that the stipulations set forth above between the State Engineer and the affected parties in "Decided Issues" are hereby approved and the Revised Determination amended accordingly;

IT IS FURTHER ORDERED the Revised Determination of Water Rights for the Escalante Valley Division as amended is approved and the individual water rights contained in said Determination are hereby decreed to be valid existing water rights and are approved and confirmed as set forth in said Determination; those rights set forth in the "Issues to be Tried" section of this Pre-Trial Order are excepted from the foregoing approval and confirmation to the extent that they are the subject matter of an individual protest; this order is also subject to those changes in ownership and approved change applications on any rights in said Determination which have occurred since the Determination was published by the State Engineer; the court further reserves the right to

correct typographical errors which may have occurred in the preparation of said Determination;

IT IS FURTHER ORDERED that the protests submitted by the following parties are dismissed:

Karla L. Tattersall

Emeline Mears

Henry A. Wood

Hal Smith

Belle Couch

#### IV.

##### ISSUES TO BE TRIED

1. The issue involving the following listed protestants is whether they are entitled to a water right for irrigation purposes in excess of the quantity set forth in the Revised Determination of Water Rights.

Each of the Water User's Claims involved in Category A was the subject matter of an individual protest hearing and subsequent Order of this Court in conjunction with the Original Proposed Determination of Water Rights. It is the contention of the State Engineer that the results of these prior orders have been incorporated into the Revised Determination of Water Rights and these protestants, by these prior court orders, are now limited to the quantity of water set forth in the Revised Determination.

Each of the water user's claims involved in Category B was contained in the Original Proposed Determination of Water Rights. These proposed awards were not protested and this court, by subsequent orders, affirmed the Original Proposed Determination as to the awards which had not been protested. It is the contention of the State Engineer that he has incorporated into the Revised Determination of Water Rights the same acreage for these rights as set forth in the Original Determination of Water Rights and that these protestants, by the prior orders of this court affirming the Original Proposed Determination, are now limited to the quantity of water described in the Revised Determination.

The State Engineer further contends that, in any event, none of these protestants established a valid diligence right for irrigation purposes in excess of the quantity described in the Revised Determination by diverting the water and placing it to beneficial use on or before March 22, 1935.

Each of these protestants assert that a valid water right has been established for a quantity of water in excess of that described in the Revised Determination of Water Rights and that they are not limited in their claims to the quantity of water described in the Revised Determination. The protestants, water user's claims, the irrigated acreage allowed in the Revised Determination, and the amount of irrigated acreage claimed is set forth below:

CATEGORY A

<u>Protestant</u>	<u>Water User Claims</u>	<u>Revised Determination (acres)</u>	<u>Acres Claimed</u>
Lyle D. Applegate	540 & 541	60.54	117.5
Teral M. Bown	501	44.19	97.6
Vernon Gronning	1408 & 1919	35	68.5
" "	1807	40	78.5
Reed J. Gillins & William L. Myers	495 & 1967	28	40.0
✓ James A. & Barbara J. Mayer	93	29.42	45.8
Kent M. Smith & George E. Smith	102 & 1897	34.6	49
William J. Stewart	490, 491, 2114	46.3	58
H. L. Tolley	106 & 1900	68.1	75
McCoy Williams	49, 50, 52, 53	182.89	218.6
McCoy Williams & Lillian Anderson	1756	25	68

CATEGORY B

<u>Protestant</u>	<u>Water User Claims</u>	<u>Revised Determination (acres)</u>	<u>Acres Claimed</u>
Elbert Applegate	507	35.5	62.6
Lyle D. Applegate	43	30.8	53.5
Duard Evans	44	56.21	74.7
George C. Goodwin	23 & 227	63.70	114.0
Otto Kesler	511	74.10	99.80
Earl Limb	62	53.90	68.10
Clauss Marshall	492 & 493	112.8	117.05
✓ Lloyd S. & Eugene H. Mayer	152 & 1870	13.23	110.60

CATEGORY B (cont'd)

<u>Protestant</u>	<u>Water User Claims</u>	<u>Revised Determination (acres)</u>	<u>Acres Claimed</u>
S. W. Nichols	431	36.30	38.0
Ralph & June Pearson	544, 545, 562	106.98	109.98
Max K. & Claris B. Price	512	62.50	78.10
Martin & Jimmie Sherwood	281 & 1853	49.80	65
Kent M. Smith	101	48.50	50
Irene Stewart	148	37.18	39
" "	567 & 1578	39.00	39.5
Theman Walker	94	32.40	37.80
Duane Yardley	520	37.70	39.50
Waldo D. Yardley	575 & 1538	92.95	99.70
" " "	97, 118, 300, 301	113.30	117

2. The duty of water in this area is presently fixed at four acre-feet per acre on an interlocutory basis by Order of this court on June 18, 1962. The issue raised by the following protestants is whether they can beneficially use water in excess of this amount.

The State Engineer contends that a duty of four acre-feet per acre is adequate and in the Revised Determination of Water Rights has recommended that the duty of water remain at four acre-feet on an interlocutory basis. This recommendation is supported by the water users represented by Sam Cline and these users also contend that the question of duty is not the subject matter for the court to review as a part of these proceedings.

The following listed protestants assert that the present duty of water is not sufficient to mature their crops and assert that they can beneficially use six acre-feet per acre on their lands:

Elbert Applegate  
Lyle D. Applegate  
Teral M. Bown  
Duard Evans  
Reed J. Gillins and  
William L. Myers  
George C. Goodwin  
Vernon Gronning  
Otto Kesler  
Earl Limb  
Clauss Marshall  
S. W. Nichols  
Ralph and June Pearson  
Max K. & Claris B. Price

Daisy Rowley and Kenley Taylor  
Martin and Jimmie Sherwood  
Kent M. Smith  
Kent M. Smith and  
George E. Smith  
Irene Stewart  
William J. Stewart  
H. L. Tolley  
Theman Walker  
McCoy Williams  
McCoy Williams and  
Lillian Anderson  
Duane Yardley  
Waldo D. Yardley



3. The issue presented by the following protestants is whether they have made a valid appropriation of water on lands owned by the United States of America. Except for the claim of Milford City, which is for a recreation use, all of the uses involved in these protests are for stockwatering purposes which take place on federal lands. Each of the protestants claim to have established a valid water right in connection with their use of the federal lands as permittees or licensees of the United States of America. It is the contention of the United States of America that it has a prior right on the sources involved and that, in any event, an individual cannot establish a valid water right to use water on federal land.

The question presented is whether historic stockwatering uses on the federal public domain establishes a diligence right in the United States under State law which is superior to appropriative or other rights claimed by livestock owners who presently or at some time in the past have occupied the public domain as permittees under grazing permits issued by the Bureau of Land Management or the U. S. Forest Service.

Howard Cook  
Milford City  
Stanley McKnight and  
Milton Albrecht  
Flag Mining Company  
Taft Paxton

Dee Robinson, Kenyon Robinson  
and Leon Robinson  
Snow Ranches, Inc.  
D. Ray Tebbs and D. A. Tebbs  
Cedar Sheep Association

4. JEFF BALDWIN

The State Engineer denied any further extension of time on approved Application Nos. 24560, 24561, 24562a, 24568, 24576, 24577, 24589, 24590, 24591, 24592, 24631, 24632, and 24633. The issue involved is whether protestant has shown due diligence or reasonable cause for delay in perfecting said applications.

A further issue involved in this protest is whether or not protestant is the owner of all of the applications involved and has a sufficient interest in all of the land covered by said applications to perfect a water right. Mable E., Leonard D., James C., and Charles E. Stimpson, represented by Durham Morris, have intervened in this action in regard to this latter issue.

5. J. DELMAR KIRK

The issue presented by this protest is whether protestant's claim for a right to irrigate 230.82 acres of land under Water User's Claim Nos. 614

and 1643 is valid. The State Engineer contends protestant should be limited to the irrigation requirements of 76.82 acres under Water User's Claim No. 614 since this is the amount allowed by a prior order of this court and protestant does not dispute this limitation. However, the State Engineer limited Water User's Claim No. 1643 to the irrigation requirements of 77.20 acres of land because he found it to be supplemental to Water User's Claim No. 614. This allows a total right for 154 acres under both claims, but protestant asserts that he has a valid right to irrigate the entire 154 acres under Water User's Claim No. 1643 or a total right under both claims for 230.82 acres of land.

6. EARL LIMB

The State Engineer limited protestant's right under Water User's Claim No. 1782 to the water requirements of 10.5 acres of land because this was the extent of protestant's irrigated acreage when this area was surveyed. The issue is whether the protestant has a valid right to the use of 0.25 c.f.s. continuous flow for use on 15 acres of land as provided under Award No. 101 of the Beaver River Decree.

7. CHARLES AND AGATHA MANNERING

The issue in this protest is whether or not protestants have established a valid water right for irrigation, stockwatering, and domestic purposes from a well located 530 feet north and 592 feet east from the SW corner of Section 1, T37S, R18W, SLBM. It is the contention of the State Engineer that there is no producing well located at this point that could satisfy the beneficial uses claimed and that the use of water in this area is from a spring stream and developed spring as presently provided for in the Revised Determination of Water Rights under Water User's Claim Nos. 846 and 1097.

8. JAMES A. AND BARBARA J. MAYER

The issue presented is whether protestants have a valid right for the irrigation of 68.40 acres under Water User's Claim Nos. 1077 and 1078. It is the contention of the State Engineer that said claims should be limited to the irrigation requirements of 59.20 acres because this is the extent of protestants' beneficial use under said claims which were used supplementally with Water User's Claim Nos. 561 and 563. The State Engineer further contends that to allow this protest would allow an expansion of protestants'

rights contrary to the Original Proposed Determination.

9. LLOYD S. AND EUGENE H. MAYER

The Revised Determination of Water Rights fixes a priority date of July 17, 1956 for Water User's Claim Nos. 1844 and 1845. The issue involved is whether said claims are entitled to the original priority date on the application to appropriate covered by said claims, which is November 23, 1946. It is the contention of the State Engineer that this application lapsed and subsequently reinstated on July 17, 1956 and therefore, this latter date fixes the priority of said claims.

10. ROCKY FORD IRRIGATION COMPANY

The issue involved in this protest is whether the point of diversion for Water User's Claim No. 1782 in the name of Earl Limb is properly described in the Revised Determination of Water Rights. In this regard the records in the State Engineer's office indicate that Earl Limb has an approved Change Application, a-4532, covering the point of diversion for said claim as described in the Revised Determination.

11. DAISY ROWLEY AND KENLEY TAYLOR

Protestants claim a right for the irrigation of 89.10 acres of land under Water User's Claim Nos. 1253, 2003, and 2900. The issue is whether the Revised Determination correctly limits protestants to the irrigation of 67.7 acres of land under said claims based on the election filed on Change Application No. a-3692 and Certificate of Appropriation No. 4138.

12. SANTA CLARA CATTLE ASSOCIATION

The issue on this protest is whether protestant has established a valid water right for irrigation purposes on the land located in the S<sub>1</sub>NE<sub>1</sub>, Sec. 14, T38S, R18W, SLBM. Protestant asserts that a valid diligence right was established for the irrigation of 25 acres. It is the contention of the State Engineer that no such right exists and that there is presently no evidence of irrigation on this property. To the extent that the land is naturally sub-irrigated it is the contention of the State Engineer that to recognize such a right would be to recognize a riparian water right which is contrary to the law of this state.

It is stipulated and agreed that protestant is entitled to a stockwatering right for 600 cattle and horses and a domestic right for 40 people on said property.

13. ELMO B. FARNSWORTH & ELANORE FARNSWORTH

The issue presented by this protest is whether the point of diversion for said well is properly described in the Revised Determination. Protestants assert that the point of diversion as set forth in the Certificate of Appropriation is correct and not the point described in the Revised Determination.

Protestants claim that they are entitled to a stockwatering right as described in Certificate of Appropriation No. 4874 and not as presently set forth in the Revised Determination of Water Rights. The State Engineer agrees with this contention and, accordingly, the Revised Determination is amended to show a stockwatering right for protestants as set forth in Certificate No. 4874.

14. EARL E. BARTON

The issue involved in this protest is whether protestant has established a valid water right for the irrigation of the 80 acres of land as claimed under Water User's Claim No. 1755. It is the contention of the State Engineer that said claim should be limited to the irrigation requirements of 76.10 acres of land because this was all the land he found to be irrigated under said claim when he surveyed this area, and further, this was the extent of the beneficial use of water under Application No. 17071 (Water User's Claim No. 1755) when protestant made proof of appropriation and said application cannot now be enlarged.

15. VICTOR A. AND DOROTHEA S. KAUFMAN

The United States of America claims that these protestants do not have a valid water right as described under Water User's Claim No. 2454, and further, claims that it is the owner of a water right from the well covered by said claim. It is the contention of the Kaufmans and the State Engineer that the Kaufmans have established a valid right as set forth in Water User's Claim No. 2545 and that the government has no right from this source.

16. DONALD C. LAMOREAUX

The issue presented by this protest is whether a lessee of the Board of State Lands can make a valid appropriation of water for use on lands which

he has leased from the State. Protestant claims he has established a valid stockwatering right on state lands as set forth in Water User's Claim No. 1703. This claim is denied by the Board of State Lands.

17. UNITED STATES OF AMERICA

The following issues have been resolved between protestant and the State Engineer and the Revised Determination shall be amended accordingly.

a. Water User's Claim Nos. 2231, 2045, 2044, 2065, 2048, 2255, 2047, 2273, 2228 and 2444 shall be allowed as amended.

b. The protest of the United States of America against the following water users is withdrawn subject to the following conditions: 1. Lewis H. and Dorothy G. Larson upon the amendment of point of diversion of Water User's Claim No. 1268 to read north 600 feet and west 200 feet from the E $\frac{1}{2}$  corner, Section 9, T30S, R12W, SLBM; 2. Water User's Claim No. 271 in the name of William H. Wood upon a correction in the point of diversion to read south 330 feet and east 1980 feet from the W $\frac{1}{2}$  corner, Section 10, T31S, R16W, SLBM; 3. Water User's Claim No. 2832 since this claim is now owned by the United States of America.

c. Protestant's Water User's Claim Nos. 856 through 886, except 870, have been withdrawn because these claims are based on Applications to Appropriate and protestant has submitted diligence claims to cover these sources which have been assigned Water User's Claim Nos. 3019 through 3048, inclusive.

d. The following additional claims have been submitted by the United States of America and the State Engineer does not object to have included: Water User's Claim Nos. 3006 through 3018, 3050, 3051 through 3070, 3092 through 3095.

This protest presents the following issues:

e. Whether the rights described in said protest for Cedar Sheep Association, Stanley McKnight and Milton Albrecht, Taft Paxton and Flag Mining Company are located on federal land or private property. To the extent it is determined that the claims of said users are on federal land the issue presented is as set forth in Issue No. 3 above.

f. The issue raised on Water User's Claim Nos. 1677 and 2139 is whether the protestant or the State of Utah is entitled to the rights described under said claim since these claims are located on State land. Protestant withdraws its protest against Water User's Claim No. 1619 and accordingly the government's protest against said claim is dismissed.

g. Protestant asserts that it has certain water rights by reason of the withdrawal and reservation of public lands in this area. The Revised Determination does not recognize any such right, the State Engineer contends no such right exists. It is agreed between the parties that this issue would be reserved for determination until the court hears the final matters relative to the Beaver River-Escalante Valley general adjudication proceedings.

18. WALTER J. MILLER

Protestant claims a water right from a spring located at approximately N. 44° 40' W. 3079 feet from the SE corner of Section 19, T26S, R11W, SLBM. The State Engineer has confirmed that said spring exists, however protestant is still in the process of preparing a water user's claim defining the nature of his claim consequently this protest will be the subject matter of a later report to the Court by the State Engineer.

The following protests all involve the Pinto Creek area and have been grouped together for convenience of reference.

19. H. KARL AND LAVON HARRISON, RICHARD HARRISON

The following issues are raised by the protestants:

a. Protestants claim to be the owners of .25 c.f.s. of water shown in the Revised Determination in the name of Newcastle Reservoir Company and claimed by said company under Water User's Claim No. 410.

b. Protestants claim a period of use for irrigation purposes from March 1 to November 30. The State Engineer has limited the use of water for irrigation purposes from April 1 to November 1 as provided for in the Original Determination of Water Rights and confirmed by prior Order of the court.

In regard to the above issues it is the contention of the State Engineer that the rights set forth in the Revised Determination of Water Rights is in accordance with the Original Proposed Determination of Water Rights and prior orders of this court which limit protestants' rights, and that, in any event, protestants have not established a valid diligence right to the extent

c. It has been stipulated and agreed between the State Engineer and protestants that protestants are entitled to a year-round stockwatering right under Water User's Claim No. 2362 and to irrigate 1.3 acres of land in the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 34, T37S, R15W, S16E and the Revised Determination shall be amended accordingly.

20. H. KARL HARRISON AND RICHARD HARRISON

The following issues are raised by the above protestants:

- a. Protestants claim a priority of 1860 for Water User's Claim Nos. 261, 392, 393, 2178, 2179, and 2181 instead of the 1903 priority for said claims as set forth in the Revised Determination.
- b. Whether protestants are entitled to a period of use for irrigation water beginning on March 1 rather than on April 1 as provided in the Revised Determination.

c. Water User's Claim Nos. 261, 393, 2181, and 2179 are limited to the water requirements of 23.66 acres in the Revised Determination. Protestants claim a valid right to irrigate 26.8 acres under said claims.

d. Water User's Claim Nos. 391, 392, 2176, and 2178 are limited to the water requirements of 3.05 acres in the Revised Determination. Protestants claim to have a valid right to irrigate 3.3 acres under said claims.

In regard to the above issues it is the contention of the State Engineer that the rights set forth in the Revised Determination of Water Rights is in accordance with the Original Proposed Determination of Water Rights and prior orders of this court which limit protestants' rights, and that, in any event, protestants have not established a valid diligence right to the extent of use claimed.

e. Whether protestants are entitled to a duty of water of eight acre-feet per acre.

21. PINTO IRRIGATION COMPANY

The following issues are raised by this protest:

- a. Protestant claims the Newcastle Reservoir Company does not have a valid water right for the use of water as described in Water User's Claim No. 409. In this regard it is the contention of the State Engineer and the Newcastle Reservoir Company that said right as set forth in the Revised Determination for Newcastle Reservoir Company is in accordance with the Original

Proposed Determination and prior orders of this court which limit protestant's rights, and that said company has established a valid diligence right to the extent of use claimed.

b. The remainder of this protest involves the priority and quantity of water allowed under Water User's Claim Nos. 1679, 1687, 2190 and 2191. The issue is whether or not the priority and flows for said claims are accurate.

c. Whether protestant is entitled to a duty of water in the amount of eight acre-feet per acre.

d. Protestant claims a stockwatering right from Pinto Creek for 600 head of livestock, and also a domestic right under Water User's Claim No. 2192. The State Engineer agrees that such a right exists and the Revised Determination shall be amended accordingly.

## 22. TOWN OF NEW CASTLE

This protestant raises the following issues:

a. Protestant claims an irrigation right for 79.10 acres of land under Water User's Claim No. 246. The Revised Determination limits this claim to 9.3 acres based on the Original Determination of Water Rights and the State Engineer contends that said additional land is being irrigated under water rights owned by Newcastle Reservoir Company.

b. Protestant claims to be the owner of .50 c.f.s. of water with a priority of 1875 for irrigation purposes evidenced by Water User's Claim No. 407 which is now shown in the Revised Determination of Water Rights to be owned by Newcastle Reservoir Company.

c. Protestant claims to be the owner by purchase of an additional 5/9 c.f.s. of water under Water User's Claim No. 246 with an 1880 priority which rises in Pinto Creek from the Upper Castle diversion dam and also 5/9 c.f.s. from Pinto Creek with a 1907 priority for domestic, the year around watering of 1000 head of livestock and for the irrigation of land which is in the Newcastle Town survey from March 15th to November 1st.

d. Protestant asserts that Newcastle Reservoir Company under Water User's Claim No. 408 should be limited under claim to water obtained from Upper Castle Creek for .75 c.f.s. from May 1 to October 1 with a priority of 1880. Protestant asserts this right was obtained from Upper Castle Creek. Newcastle Reservoir Company claims that under this right it has a demand on the entire system.



In regard to the above issues it is the contention of the State Engineer and the Newcastle Reservoir Company that the rights set forth in the Revised Determination of Water Rights is in accordance with the Original Proposed Determination of Water Rights and prior orders of this court which limit protestants' rights, and that, in any event, protestants have not established a valid diligence right to the extent of use claimed.

e. Protestants have withdrawn their protest of the duty of water and accordingly this portion of said protest is dismissed.

23. MARY TULLIS

Protestant claims to have a diligence right for culinary purposes from certain springs located on her property in Pinto Canyon in the SE $\frac{1}{4}$ NE $\frac{1}{4}$ , Section 10, T37S, R15W, SLBM. It is the contention of the State Engineer that the springs referred to in protest do not exist.

24. REX H. GUBLER

The issue presented by this protest is whether protestant can beneficially use eight acre-feet of water on his land. It is the contention of the State Engineer that the duty which he has recommended to the court of four acre-feet per acre plus one additional acre-foot per acre for transmission losses, is adequate to meet the protestant's needs.

In the Revised Determination Water User's Claim No. 236 is limited to the water requirements of 7.7 acres of land and it has been stipulated between protestant and the State Engineer that the irrigation right under said claim should be increased to 17.5 acres of land and the Revised Determination should be amended accordingly.

25. ARTHUR F. CROSBY

The issue presented here is whether protestant has a valid diligence right for the irrigation of 20 acres of land. The State Engineer has limited protestant's right under Water User's Claim No. 419 to the irrigation requirements of 14.60 acres of land. It is the contention of the State Engineer that the Revised Determination is in accordance with the Original Proposed Determination and prior orders of this court which limit protestant's right and that, in any event, protestant has not established a valid diligence right to the extent of the use now claimed.

The additional issue presented by this protest is whether protestant can beneficially use eight acre-feet of water on his land. It is the contention of the State Engineer that the duty which he has recommended to the court of four acre-feet per acre plus one additional acre-foot per acre for transmission losses is adequate to meet the protestant's needs.

It having been agreed among the water users in the Pinto Creek area that the use of water from Pinto Creek shall be controlled and governed on an interim basis by that certain stipulation dated July 16, 1962, a copy of which has been filed with this Court. Said stipulation modifies certain provisions of the Revised Determination of Water Rights.

NOW, THEREFORE, it is hereby ORDERED that the water commissioner shall distribute the waters of Pinto Creek according to the terms and provisions of the July 16, 1962 Stipulation; this is to be on an interlocutory basis subject to any interested party petitioning the court for a modification of this order and it is further provided that this order is without prejudice to any of the claims of the parties as previously set forth in this Pre-Trial Order.

Dated this 27<sup>th</sup> day of August, 1970.

1st. James P. McCune  
DISTRICT JUDGE